

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

VECENTIE S. MORALES, Jr., Personal)
Representative and Only Son of)
VECENTIE S. MORALES, Sr., Decedent,)

Plaintiff,)

v.)

Case No. CIV-10-304-D

ERIK K. SHINSEKI, Secretary of the)
U.S. Department of Veterans Affairs,)
Individually and Officially,)
JERRY D. LEMONS, M.D., and)
THE LAWTON VETERANS)
OUTPATIENT CLINIC,)

Defendants.)

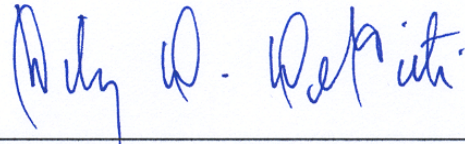
**ORDER SUBSTITUTING UNITED STATES
FOR DEFENDANT LAWTON VETERANS OUTPATIENT CLINIC**

Before the Court for consideration is Defendant Lawton Veterans Outpatient Clinic's Motion to Substitute the United States as the proper party defendant in this action. [Doc. No. 28]. The deadline for responding to the motion has expired, and Plaintiff has failed to file an objection. Accordingly, the motion may be deemed confessed. LCvR 7.1(g).

In any event, the motion must be granted because, as Defendant correctly argues, Plaintiff's claims must be brought pursuant to the Federal Tort Claims Act, and the United States is the proper defendant where a federal agency is being sued. *See Smith v. United States*, 561 F. 3d 1090, 1099 (10th Cir. 2009) (citations omitted). The Lawton Veterans Outpatient Clinic is a federal government facility. Accordingly, the United States must be substituted for the Clinic as the proper defendant in this action.

The Lawton Veterans Outpatient Clinic is hereby dismissed from this action; the United States is substituted as the defendant in its place; the style of the action shall be changed to reflect the substitution of the United States in place of the Lawton Veterans Outpatient Clinic. The action will proceed accordingly.

IT IS SO ORDERED this 18th day of April, 2011.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE